International Alliance of Theatrical and Stage Employees, Greater New Orleans Stage, Motion Picture, Television and Exhibition Employees Local Union No. 39, AFL–CIO *and* Shepard Exposition Services, Inc. and United Brotherhood of Carpenters & Joiners of America, Louisiana Carpenters Regional Council, and its Affiliated Local No. 1846. Case 15–CD–304

July 2, 2002

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN HURTGEN AND MEMBERS COWEN AND BARTLETT

This is a work jurisdiction dispute proceeding under Section 10(k) of the Act. The charge was filed on October 1, 2001, by Shepard Exposition Services, Inc. (Shepard or the Employer), and alleges that the Respondent, International Alliance of Theatrical and Stage Employees, Greater New Orleans Stage, Motion Picture, Television and Exhibition Employees Local Union No. 39, AFL–CIO (IATSE), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by United Brotherhood of Carpenters & Joiners of America, Louisiana Carpenters Regional Council, and its affiliated Local No. 1846 (Carpenters). The hearing was held on November 26 and 27, 2001, before Hearing Officer Stacey M. Stein.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Georgia corporation with its principal place of business located in Atlanta, Georgia, is a general service contractor in the convention and trade show industry. The parties stipulated that within the 12 months preceding the hearing, which is a representative period, the Employer performed services valued in excess of $50,000 in states other than Georgia. We accordingly find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, based upon the stipulation of the parties, that IATSE and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a general service contractor engaged in erecting and dismantling booths and exhibits in the convention and trade show industry. The Employer performs work throughout the United States, including sporadically in New Orleans, Louisiana. The Employer typically provides the supervisor for jobs it has in New Orleans, but obtains labor locally in New Orleans.

Commencing in May 1984, the Employer and IATSE entered into the first of four successive collective-bargaining agreements, recognizing IATSE as the exclusive collective-bargaining representative of the Employer's employees engaged in trade show work in New Orleans, and obligating the Employer to obtain all its labor from IATSE for projects performed in New Orleans. The final of these agreements was effective from July 1, 1994 to June 30, 1997, which was extended by agreement of the parties until March 1998. By letter dated April 29, 1998, the Employer notified IATSE that it was terminating their collective-bargaining agreement. In sum, from 1984 to 1998, IATSE provided all trade show labor to the Employer for its projects in New Orleans.[1]

Thereafter, the Employer entered into a collective-bargaining agreement with Carpenters, effective from March 2000 to June 2002, to provide labor for the Employer's trade show work in New Orleans. The Employer performed three projects in New Orleans with labor provided by Carpenters.

On November 17, 1999, IATSE filed an unfair labor practice charge in Case 15–CA–15623–1 alleging that the Employer violated Section 8(a)(1), (2), (3), and (5) of the Act by entering into the collective-bargaining agreement with Carpenters. On April 4, 2000, the Regional Director issued a complaint in Case 15–CA–15623–1 alleging that the Employer had unlawfully withdrawn its recognition from IATSE, refused to bargain with IATSE and to hire employees from the IATSE hiring hall, and rendered unlawful support to Carpenters by entering into

[1] Prior to June 1997, IATSE had collective-bargaining agreements with numerous other convention and trade show employers in the New Orleans area, requiring these employers to obtain employees exclusively from the IATSE hiring hall. IATSE commenced a strike against these employers upon the expiration of these contracts on June 30, 1997. In *Freeman Decorating Co.*, 336 NLRB 1 (2001), the Board found, inter alia, that certain of these employers unlawfully withdrew recognition of IATSE, unlawfully discharged employees who engaged in the strike, and unlawfully recognized Carpenters as the collective-bargaining representative of their employees at a time when they were still obligated to bargain with IATSE. The Employer in this proceeding was not a party to the *Freeman* case, and was not an object of the strike.

the Employer-Carpenters collective-bargaining agreement. On September 14, 2000, the Employer and IATSE entered into a confidential non-Board settlement which provided, inter alia, that the Employer agreed to recognize IATSE as the exclusive collective-bargaining representative of its employees employed in trade show work in New Orleans and agreed to enter into a new collective-bargaining agreement with IATSE. On October 5, 2000, the Regional Director approved the request of IATSE that its unfair labor practice charge be withdrawn and withdrew the complaint in Case 15–CA–15623–1.

On November 2, 2000, the Employer informed Carpenters that it considered its collective-bargaining agreement with them to be null and void based on the issuance of the above-described complaint. In March 2001, pursuant to their settlement agreement, IATSE and the Employer entered into a collective-bargaining agreement which, like the previous IATSE-Employer contracts, obligated the Employer to obtain its labor from IATSE for trade show projects performed in New Orleans.

In March 2001, the Employer utilized IATSE to provide labor for two trade shows in New Orleans. Carpenters responded by filing two grievances against the Employer, asserting that the Employer was in violation of the Carpenters-Employer collective-bargaining agreement by failing to hire Carpenters-represented employees to perform the March 2001 trade shows. The Employer declined the Carpenters' attempt to arbitrate the grievances. Carpenters thereafter filed a lawsuit against the Employer in the United District Court for the Eastern District of Louisiana, pursuant to Section 301 of the Labor Management Relations Act,[2] seeking to compel arbitration of the grievances.[3]

By a faxed letter dated October 9, 2001, the Employer informed IATSE that it saw "no recourse but to begin assigning work on our jobs in New Orleans to individuals represented by the Carpenters in order to minimize damages, which may result from the [Federal district court] litigation, instituted by the Carpenters." IATSE responded to the Employer that same day by fax, which provided in part:

> [We are] in receipt of your fax dated September 21, 2001 in which you state that you will be henceforth assigning bargaining unit work to employees referred by the carpenters union. IATSE Local No. 39 considers this to be a breach of the settlement agreement that we reached with Shepard in resolution of our unfair labor practice charges and unfair labor practices under the National Labor Relations Act. If you assign any bargaining unit work to the carpenters union, we will conduct a strike and picket such work.

B. The Work in Dispute

The work in dispute concerns the assignment of the following work:

> In the Greater New Orleans area, including the parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles and Plaquemines, the uncrating, erection, dismantling and recreating of all built-up fabricated displays at exhibit sites, rigging, and carpet installation and removal; the handling and erection of all hard wall booths, pegboards, sheetrock and/or specially built booths on exhibit sites where any material is attached together to form a display; the building and/or installation of all platforms, walls, turntables, counters and/or any item fabricated or built on exhibit sites; the laying out and marking of all lines needed to perform the above-described work; and the loading, unloading, and movement of the Employer's equipment and material, operation of all fork and pallet lifts and related equipment. As well as, to the extent not already listed above, the installation, dismantling and operation of scenery, curtains, properties, electrical effects, and the operation of spotlights; installation and dismantling of exhibits, displays, booths, decorations; and the installation, dismantling and operation of sound accessories, motion picture, T.V. and video tape productions.

C. Contentions of the Parties

1. Carpenters

Carpenters argue that the notice of a 10(k) hearing should be quashed because this proceeding does not involve a dispute between unions over conflicting work jurisdictions. Rather, Carpenters assert that the Employer has breached the Carpenters-Employer collective-bargaining agreement by its assignment of the New Orleans-based trade show work to employees represented by IATSE. Carpenters thus contend that the instant proceeding involves a contractual dispute between the Employer and Carpenters over the preservation of bargaining unit work for Carpenters-represented employees that does not fall within the scope of Section 10(k) under *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320 (1961), and its progeny. Carpenters additionally argue that this matter could be resolved through the grievance-arbitration procedure contained in the Carpenters-Employer collective-bargaining agreement. If the Board should decide that the dispute is properly before the

[2] 29 U.S.C. Sec. 185.

[3] The lawsuit was pending at the time of the hearing in this proceeding.

Board for determination, Carpenters contend that the work in dispute should be awarded to employees it represents based on the factors of collective-bargaining agreements, area and industry practice, and skills, and that a broad award in favor of Carpenters is appropriate.

2. IATSE and the Employer

IATSE and the Employer contend that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated because both IATSE and Carpenters claim the work in dispute, and IATSE threatened the Employer that it would strike and picket the Employer if it assigned the disputed work to employees represented by Carpenters. IATSE additionally argues that Carpenters' work preservation defense is meritless because both IATSE and Carpenters have countervailing contractual claims to the work in dispute, and therefore the dispute is not readily amenable to a consistent resolution independent of Section 10(k) of the Act.[4] IATSE reasons that if the Board fails to reach the merits of the instant dispute, both Carpenters and IATSE will seek to arbitrate grievances under their respective contracts with the Employer and because "each union will likely prevail under its own contract, [the Employer] will be subject to conflicting awards, and the parties' dispute will continue."

IATSE and the Employer argue that the work in dispute should be awarded to IATSE-represented employees based on the following factors: the Employer's preference and past practice, area and industry practice, the skills of employees represented by IATSE, and the economy and efficiency of the Employer's operations.[5] IATSE and the Employer further argue that, because the parties' dispute is likely to recur, it is appropriate for the Board to issue a broad award in this proceeding.

D. Applicability of the Statute

It is well settled that the standard in a 10(k) proceeding is whether there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It requires a finding that there is reasonable cause to believe that a party has used proscribed means to enforce its claim to the work in dispute, that there are competing claims to the disputed work between rival groups of employees, and that no method for the voluntary adjustment of the dispute has been agreed on.

These jurisdictional prerequisites have been met in this case. Both IATSE and Carpenters claim the work in dispute.[6] IATSE threatened the Employer that it would picket and conduct a strike against the Employer if the Employer assigned the disputed work to Carpenters-represented employees. Further, there is no agreed-upon method for the voluntary adjustment of the dispute which is binding upon all the parties in this proceeding.[7]

We find without merit Carpenters' contention that the instant proceeding is a contractual dispute between the Employer and Carpenters over the preservation of bargaining unit work for Carpenters-represented employees that does not fall within the scope of Section 10(k) of the Act. The Board has explained that such a work preservation defense requires a showing that "the union's members had previously performed the work in dispute and the union was not attempting to expand its work jurisdiction." *Teamsters Local 107 (Reber-Friel Co.)*, supra, 336 NLRB 518, 521. The record here shows that Carpenters-represented employees performed the disputed work on only three occasions. In the absence of any indication that this work history amounted to more than isolated assignments, we find that it provides Carpenters no basis to raise a valid work-preservation claim regarding the disputed work. The Carpenters' objective here was thus not that of work preservation, but of work acquisition. Further, the competing contractual claims by IATSE and Carpenters to the work in dispute indicate that the work assignment at issue is not readily amenable to a consistent resolution independent of this 10(k) proceeding. Id. at fn. 7.

We thus find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, and that the dispute is properly before the Board for determination. We accordingly deny the Carpenters' request to quash the notice of hearing.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense

[4] IATSE cites in support *Teamsters Local 107 (Reber-Friel Co.)*, 336 NLRB 518 (2001).

[5] The Employer additionally argues that the factor of collective-bargaining agreements favors awarding the work in dispute to employees represented by IATSE. IATSE additionally argues that the factors of gain or loss of employment, and arbitration awards, favor awarding the work in dispute to IATSE-represented employees.

[6] The invocation of the grievance-arbitration procedure by Carpenters against the Employer constitutes a demand for the disputed work. See, e.g., *Machinists (Hudson General Corp.)*, 326 NLRB 62, 65 (1998); *Iron Workers Local 8 (Selmer Co.)*, 291 NLRB 222 (1988)(erroneously dated 1990 in bound volumes).

[7] The grievance-arbitration provision of the Carpenters-Employer collective-bargaining agreement does not constitute an agreed-upon method for voluntary adjustment of the dispute because IATSE is not a party to that agreement. See, e.g., *Carpenters Local 624 (T. Equipment Corp.)*, 322 NLRB 428, 429–430 (1996).

and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962); *Asplundh Construction Corp.*, 318 NLRB 633 (1995).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence of any Board certifications concerning the employees involved in this dispute.

As set forth above, the Employer is party to separate collective-bargaining agreements with IATSE and Carpenters. The most recent Employer-IATSE collective-bargaining agreement, effective from July 1, 1997 to June 30, 2002, provides at section 1, A, as follows:

> It is herein agreed that [the Employer] does herein recognize the Union as the collective bargaining representative of the following-described on-call employees of said company:
>
> Those employees who are engaged in the installation, dismantling and operation of scenery, curtains, properties, electrical effects, and the operation of spotlights; installation and dismantling of exhibits, displays, booths, decorations; and the installation, dismantling and operation of sound accessories, motion picture, T.V. and video tape productions where the Company has the contract and responsibility for the installation, dismantling and operation of such equipment.

The Employer-Carpenters collective-bargaining agreement, effective from March 2000 to June 2002, provides at articles I and V that the Employer recognizes the Carpenters as the bargaining agent for all employees performing work within the Carpenters' jurisdiction, as follows:

> (a) The uncrating, erection, dismantling, and recrating of all built-up fabricated displays at the exhibit sites, rigging, and carpet installation and removal.
>
> (b) The handling and erection of all hard wall booths, pegboards, sheetrock, and/or specially built booths on the exhibit site where any material is attached together to form a display.
>
> (c) The building and/or installation of all platforms, walls, turntables, counters and/or any items fabricated or built on the exhibit sites.
>
> (d) The laying out and marking of all lines needed to perform the above referred work.
>
> (e) All of the above shall apply for any Trade Show, Industry Product Show, Trade Fair, Exposition, Manufacturer Show, or any other display or advertising show.
>
> (f) At the Employer's discretion, loading, unloading, and movement at worksite of the Employer's equipment and material, operation of all fork and pallet lifts and related equipment.
>
> (g) Any other work as assigned by the Employer.

Thus, both the IATSE contract and the Carpenters' contract specifically refer to the work in dispute in this proceeding. The factor of collective-bargaining agreements accordingly does not favor an award of the disputed work to employees represented by either Union.

2. Employer preference and current assignment

The Employer currently has assigned, in its most recent New Orleans-based trade show projects, the disputed work to employees represented by IATSE, and prefers that the work in dispute continue to be performed by employees represented by IATSE. This factor accordingly favors awarding the work in dispute to the employees represented by IATSE.

3. Employer's past practice

The record shows that, from 1984 to 1998, the Employer assigned all its trade show work for its projects in New Orleans to employees represented by IATSE, and also assigned to IATSE-represented employees its most recent New Orleans trade show work in March 2001. In contrast, the Employer assigned the disputed work to employees represented by Carpenters on only three occasions in 1999 and 2000. Thus, the Employer's predominant past practice has been to assign the disputed work to employees represented by IATSE, and we accordingly find that this factor favors awarding the work in dispute to IATSE-represented employees.

4. Area practice

IATSE Business Agent Donald Gandolini testified that IATSE has collective-bargaining agreements with approximately 50 trade show employers in the New Orleans area to provide trade show labor. Gandolini testified, in contrast, that Carpenters have collective-bargaining agreements with three to five trade show employers in the New Orleans area. Carpenters do not dispute this testimony, and indeed make no specific argument in their brief to the Board regarding the predominant practice in the New Orleans area. We accordingly find that the factor of area practice favors awarding the work in dispute to employees represented by IATSE.[8]

[8] The evidence presented at the hearing does not establish a consistent industry practice, however, with trade show work nationwide being performed by IATSE, Carpenters, and two other unions. The factor of

5. Relative skills

The record shows that Carpenters maintain a training program for trade show employees it represents. Cecil Adams, the Employer's vice president of national operations, testified that the employees represented by Carpenters possess the requisite skills to perform the trade show work. Adams likewise testified that employees represented by IATSE possess the skills to perform the disputed trade show work. In addition, the record shows that IATSE has conducted training seminars for trade show employees it represents, and has the capability to refer to employers large numbers of qualified IATSE-represented trade show workers. In these circumstances, we find that the factor of relative skills does not favor an award of the disputed work to either group of employees.

6. Economy and efficiency of operations

The record contains no evidence that would support a finding that the Employer would experience greater economy and efficiency of operations by utilizing one group of employees rather than the other.[9] Accordingly, we find that that this factor is inconclusive and does not favor an award of the disputed work to either group of employees.

Conclusions

After considering all the relevant factors, we conclude that Shepard's employees represented by IATSE are entitled to perform the work in dispute. We reach this conclusion relying on the factors of Employer preference and current assignment, Employer past practice, and area practice. In making this determination, we are awarding the disputed work to employees represented by International Alliance of Theatrical and Stage Employees, Greater New Orleans Stage, Motion Picture, Television and Exhibition Employees Local Union No. 39, AFL–CIO, not to that Union or to its members.

Scope of the Award

IATSE requests that the Board issue a broad award to employees represented by it covering all of the disputed work performed by Shepard within the geographic area set forth in the Carpenters' collective-bargaining agreement with Shepard.[10] The Board customarily declines to grant a broad or areawide award in cases in which, as in the instant proceeding, the *charged party* represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See *Pipefitters Local 562 (Systemaire, Inc.)*, 321 NLRB 428, 431 (1996); *Laborers Local 243 (A. Amorello & Sons)*, 314 NLRB 501, 503 (1994). Because the work in dispute is defined on an area-wide basis, however, our determination applies to all disputed work performed in "the Greater New Orleans area, including the parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles and Plaquemines[.]"

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees represented by International Alliance of Theatrical and Stage Employees, Greater New Orleans Stage, Motion Picture, Television and Exhibition Employees Local Union No. 39, AFL–CIO, are entitled to perform, in the Greater New Orleans area, including the parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles and Plaquemines, the uncrating, erection, dismantling, and recreating of all built-up fabricated displays at exhibit sites, rigging, and carpet installation and removal; the handling and erection of all hard wall booths, pegboards, sheetrock and/or specially built booths on exhibit sites where any material is attached together to form a display; the building, and/or installation of all platforms, walls, turntables, counters, and/or any item fabricated or built on exhibit sites; the laying out and marking of all lines needed to perform the above-described work; and the loading, unloading, and movement of the Employer's equipment and material, operation of all fork and pallet lifts and related equipment. As well as, to the extent not already listed above, the installation, dismantling and operation of scenery, curtains, properties, electrical effects, and the operation of spotlights; installation and dismantling of exhibits, displays, booths, decorations; and the installation, dismantling and operation of sound accessories, motion picture, T.V. and video tape productions.

industry practice thus does not favor an award of the disputed work to employees represented by either Union.

[9] The comparative wage rates of the two labor organizations is not a relevant consideration. See *Laborers Local 320 (Northwest Metal Fab & Pipe)*, 318 NLRB 917, 919 fn. 6 (1995).

[10] The Employer also requests a broad award.